

REMARKS

Claims 1 to 16 and 19 to 29 remain pending. Claims 11, 12 and 19 to 24 remain withdrawn.

Claims 1, 8 to 10, and 13 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 2002/0071878 ('878). The Action stated that '878 disclosed a topical cosmetic composition having cultured seed cells obtained from cucumber and carrot and is used in cosmetic/dermatological compositions. The Action also stated that the composition had a vehicle. The Action further stated that homogenization is disclosed in the examples in '878. The Action stated that disclosed examples do not constitute a teaching away from a broader disclosure or non-preferred embodiments.

Claims 1, 8 to 10, and 13 as amended are novel and nonobvious in view of '878. Claims 1 and 13 as amended require that the plant seed cells have a broad range of plant cell constituents of the plant seed cells. The plant cells of '878 do not have such a broad range of plant cell constituents. In '878, producer cells are cultured and ultimately extracted to obtain dormans, dormancy-inducing substances (paragraphs 0015 to 0019). Producer cells are obtained from dormant parts of a plant or are induced into a dormant state prior to culturing (paragraph 0038). The dorman extracts can then be used in medical and cosmetic applications and to inhibit growth in target cells (paragraphs 0024 and 0033). As is apparent from the foregoing, the producer cells (plant cells) of '878 are not cultured and replicated to produce plant cells having a broad range of plant cell constituents. Rather, the producer cells are cultured and replicated and ultimately extracted to produce a single functional class of plant cell constituent, namely, dormans.

Production of a single functional class of plant cell constituent is inconsistent with the aim of producing plant cells having a broad range of plant cell constituents as with the plant seed cells of the claimed invention.

Claims 1, 8 to 10, and 13 as amended are novel and nonobvious in view of '878 for additional reasons. Claims 1 and 13 require plant seed cells and that the plant seed cells be substantially undifferentiated and homogenized. The '878 reference does not disclose embodiments that have these features either in its working examples or its general teachings.

First, independent claims 1 and 13 require plant seed cells. '878 discloses cell cultures derived from any plant parts having dormans or induced into having dormans, including bulbs, combs, roots, and seeds [paragraphs 0038 and 0039]. Thus, seeds must be selected from a list of at least four plant parts.

Second, claims 1 and 13 require that plant seed cells be substantially undifferentiated. As discussed in the instant specification at page 3, last paragraph, plant seeds contain both differentiated and substantially undifferentiated cells. '878 discloses plant seed cells only generally, without respect to cell type. Thus, substantially undifferentiated seed cells would have to be selected in view of the disclosure of '878 when such disclosure makes no mention, let alone a distinction, between differentiated/substantially undifferentiated cell types.

Third, claims 1 and 13 require that plant seed cells be homogenized. If '878 is deemed to disclose both homogenized and non-homogenized plant cells, then selection of homogenized plant cells from among the two would be necessary. The Action stated that although homogenization was disclosed in the examples in

'878, this does not constitute a teaching away from a broader disclosure or non-preferred embodiments. While disclosure of homogenized plant cells only in the examples of '878 might not be construed as teaching away, it does imply that homogenized plant cells are optional, and, thus, may not result in an anticipation of the claimed invention when combined with other features of the invention that must also be selected.

In summary, to anticipate the claimed invention, the following would be required: 1) selection of plant seed cells from a listing of bulbs, combs, roots, and seeds; 2) selection of differentiated seed cells from among differentiated and substantially undifferentiated seed cells; and 3) selection of homogenized plant cells from among homogenized and non-homogenized plant cells. The foregoing yields sixteen possible combinations, thus '878 can hardly be considered to anticipate the claimed invention.

Claims 2 to 7, 14 to 18, and 25 to 29 have been rejected under 35 U.S.C. 103(a) as being unpatentable over '878 in view of WO 00/64472 ('472). The Action stated that '472 disclosed a method and dermatological composition using a fruit extract at 0.1 to 20%. The Action stated that it was obvious to manipulate the amount of cultured seed cells in the composition of '878 to achieve a beneficial effect and to select specific seeds depending on a specific condition in view of the disclosure of '472.

The rejection of claims 2 to 7, 14 to 18, and 25 to 29 under 35 U.S.C. 103(a) over '878 in view of '472 is not well taken in view of the amendments to independent claims 1 and 13 and the remarks provided in response to the rejection under 35 U.S.C. 102(b). Manipulation of the amount of cultured seed cells in

view of '472 will still not yield the claimed invention in view of the deficiencies of '878 discussed above. Further, the combination of '878 and '472 is not well taken. '472 discloses a skin composition containing fruit extracts but not plant seed cells. The compositions of '878 and '472 are too different for their combination to be suggested to one of ordinary skill in the art.

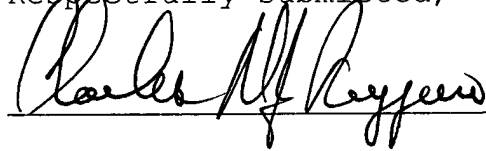
Claim 1 has been rejected under 35 U.S.C. 103(a) as being unpatentable over JP 06-298695 ('695). The Action stated that JP '695 disclosed cultured, homogenized, undifferentiated seeds used in cosmetics. The Action admits that JP '695 does not disclose the use of a broth as a culture media. The Action stated that Applicants have failed to show the criticality of using the broth over other media.

The rejection of claim 1 under 35 U.S.C. 103(a) over JP 06-298695 ('695) is not well taken. Claim 1 requires that the plant seed cells be homogenized and substantially undifferentiated and that they be provided for the topical composition in the form of a broth. In contrast, JP '695 discloses neither. JP '695 discloses culturing of bean sprouts. Bean sprouts contain differentiated cells (as opposed to undifferentiated cells). Thus, the requirement of undifferentiated seed cells is not met. Further, JP '695 discloses various extraction and fractionation processing steps but does not disclose homogenation by name or otherwise by equivalent function. Thus, the claim requirement of homogenized seed cells is not met. Still further, JP '695 discloses the formation of a broth to culture the bean sprouts but only as an intermediate and not as an end product suitable for incorporation into a topical composition. In JP '695, the disclosed broth is extracted/fractionated into extract form used as an antibacterial agent for foods and cosmetics. An extract is

different than a broth. Thus, the claim requirement of a topical composition having a broth therein is not met.

Reconsideration of claims 1 to 16 and 19 to 29 is deemed warranted in view of the foregoing, and allowance of said claims is earnestly solicited.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Charles N. J. Ruggiero", written over a horizontal line.

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Charles N. J. Ruggiero
Reg. No. 28,468
Attorney for Applicants
Ohlandt, Greeley, Ruggiero
& Perle, L.L.P.
One Landmark Square
Stamford, CT 06901-2682
Tel: 203-327-4500